

SENATE BILL 2166

By Stevens

AN ACT to amend Tennessee Code Annotated, Title 35
and Title 48, relative to trusts.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 35-15-813(e)(2), is amended by deleting the last sentence in the subdivision and substituting the following:

To the extent a settlor, trust advisor, or trust protector directs a trustee not to send its report or other information otherwise required to be furnished under this section to a beneficiary or beneficiaries and does not designate a representative to receive the information, the trustee shall send the information it would otherwise be required to send to the beneficiary or beneficiaries to the settlor, trust advisor, or trust protector, which has the same effect as sending the report or other information otherwise required to be furnished under this section to the beneficiary or beneficiaries.

SECTION 2. Tennessee Code Annotated, Section 35-15-1206, is amended by deleting the section in its entirety.

SECTION 3. Tennessee Code Annotated, Section 35-15-205(b)(1), is amended by deleting the subdivision and substituting the following:

(1) The name and address of the then-serving trustee, trust advisor, and trust protector, to the extent known by the petitioner;

SECTION 4. Tennessee Code Annotated, Section 35-15-205(c), is amended by deleting the subsection and substituting the following:

(c) The petition must be served on each trustee, trust protector, trust advisor, and qualified beneficiary or their representative under part 3 of this chapter to the extent there is no material conflict of interest.

SECTION 5. Tennessee Code Annotated, Section 35-15-205(e), is amended by deleting the word "petition" and substituting the language "final accounting".

SECTION 6. Tennessee Code Annotated, Section 35-15-205(f), is amended by deleting the subsection and substituting the following:

(f) In accordance with § 35-15-1004, costs and expenses, including reasonable attorney's fees of the petitioner, must be taxed against the trust, unless otherwise directed by the court.

SECTION 7. Tennessee Code Annotated, Section 35-15-604, is amended by deleting the section and substituting the following:

(a) A person may commence a judicial proceeding to contest the validity of a trust that was revocable immediately preceding the settlor's death within the earlier of:

(1) Two (2) years after the settlor's death; or

(2) One hundred twenty (120) days after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust's existence, the trustee's name and address, and the time allowed for commencing a proceeding to contest the validity of the trust.

(b) Upon the death of the settlor of a trust that was revocable immediately preceding the settlor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. Except as provided in § 35-15-817, the trustee is subject to liability for making the distribution only if at the time of the distribution:

(1) The trustee had actual knowledge of a pending judicial proceeding contesting the validity of the trust; or

(2) A potential contestant had notified the trustee in writing of a possible judicial proceeding to contest the trust and the judicial proceeding is commenced within sixty (60) days following the trustee's receipt of the notification.

(c) In the event a trust or trust provision is adjudged to be invalid by the final judgment of the court having jurisdiction, which judgment is subject to no further appeal, any beneficiary having received an improper distribution shall, upon receipt of a copy of such order, return the improper distribution to the court. If the beneficiary fails to return the improper distribution to the court, the beneficiary is liable for costs, including reasonable attorney's fees, incurred to recover the improper distribution from the beneficiary.

SECTION 8. Tennessee Code Annotated, Section 35-15-817, is amended by deleting the section and substituting the following:

35-15-817. Distribution upon termination, partial termination, or fiduciary removal or resignation-- Discharge of fiduciary liability.

(a) Upon the occurrence of an event terminating or partially terminating a trust, or upon the trustee's removal or resignation, the trustee shall proceed to distribute the trust property to the persons entitled to it within a reasonable period of time, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, attorney fees, and taxes.

(b) A trustee may send a notice pursuant to this section seeking to be relieved from liability upon such trustee's removal or resignation, or upon the full or partial termination of the trust.

(c) A notice sent by a trustee under this section must include:

(1) A statement of the fair market value of the trust's assets and the trust's liabilities, known to the trustee, as of a date specified in the notice, which date must not be more than thirty (30) days prior to the date the notice is sent;

(2)

(A) A statement of the following during the time period determined under subdivisions (c)(2)(B) and (C):

- (i) Gains and losses on trust assets;
- (ii) Fees and expenses paid to the trustee and the trustee's advisors;
- (iii) Fees and expenses paid to a trust advisor, trust protector, and any advisors of a trust advisor or trust protector;
- (iv) Taxes paid;
- (v) The trust's receipts, including the source and the amount of each such receipt;
- (vi) The trust's disbursements, including the recipient of the disbursement and the amount of each such disbursement; and
- (vii) A reasonable estimate of the remaining fees and costs to be paid by the trust prior to the removal, resignation, or termination, as applicable;

(B) A statement required under subdivisions (c)(2)(A)(i)-(vii) must cover the time period that begins with the most recent of:

- (i) The date of acceptance of the trusteeship by the trustee sending the notice;
- (ii) The end of the period since an accounting was last approved by the court pursuant to § 35-15-205; and

(iii) If a notice was previously sent in compliance with this section by the trustee sending the notice, then the date upon which the time period under subsection (f) terminated and no person timely objected in a writing delivered to the trustee, or, to the extent an objection was timely made in a writing and delivered to the trustee, then the date on which the objections were resolved by nonjudicial settlement agreement under § 35-15-111; provided, however, that in no event shall the period described in this subdivision (c)(2)(B) exceed three (3) years;

(C) The ending of the time period covered by a statement required under subdivisions (c)(2)(A)(i)-(vii) must be no more than thirty (30) days prior to the date that the notice is sent;

(3) A statement of the beginning and ending dates of the time period covered by the statement required under subdivisions (c)(2)(A)(i)-(vii);

(4) A proposal for distribution;

(5) Notice that the trust is terminating in whole or in part, or that the trustee has resigned or has been removed and a statement providing that claims against a trustee under §§ 35-15-604 and 35-15-1005, if applicable, are barred if no objections specifically referencing the notice are received in writing by the trustee within the time period described in subsection (f);

(6) The name, telephone number, and mailing or electronic mail address of each trustee, trust advisor, and trust protector, to the extent known by the trustee sending the notice; and

(7) The name, telephone number, and mailing or electronic mail address of a person who may be contacted for additional information.

(d) A notice sent by a trustee under this section shall be sent to:

(1) The grantor, if living;

(2) Each qualified beneficiary or such qualified beneficiary's representative under part 3 of this chapter to the extent there is no material conflict of interest; and

(3) All other then-serving trustees, trust advisors, and trust protectors known to the trustee sending the notice.

(e) The trustee may also provide the notice to any person not described in subsection (d) whom the trustee reasonably believes may also have an interest in the trust.

(f) The right of any person described in subsection (d), or to whom the trustee sent a notice pursuant to subsection (e), to object to the notice under this section terminates if the person does not notify the trustee in writing of an objection within forty-five (45) days after the person received the notice.

(g) If the trustee sending the notice complies with this section, and if no person described in subsection (d), or to whom the trustee sent a notice pursuant to subsection (e), objects within the time period prescribed in subsection (f), then the trustee shall within a reasonable period of time following the expiration of such period, distribute the trust's assets as provided in the proposal for distribution included in the notice.

(h) If the trustee sending the notice complies with this section, and if no person described in subsection (d) and no person to whom the trustee has distributed a notice pursuant to subsection (e) objects within the time period prescribed in subsection (f), then the trustee sending the notice is relieved from any liability for the period covered by the notice, and the persons who received notice under this section are time barred from:

(1) Commencing a judicial proceeding to contest the validity of the trust, except as otherwise provided in § 35-15-604;

(2) Commencing a judicial proceeding for a claim of breach of trust against the trustee to the same extent and with the same preclusive effect as if the court had entered a final order approving the trustee's account under § 35-15-205; and

(3) Commencing a judicial proceeding for a claim of breach of fiduciary duty against a co-trustee, trust advisor, or trust protector for failure to object to the trustee's notice under this section.

(i) A trustee may rely upon the written statement of a person indicating no objection to the notice as a failure to object within the time period prescribed in subsection (f) regardless of whether such time period has terminated.

(j) If the trustee receives a written objection within the period prescribed in subsection (f) from any person to whom the trustee sent a notice, then the trustee may resolve the objection by nonjudicial settlement agreement under § 35-15-111 or seek judicial relief under § 35-15-205.

(k) For the purpose of determining the date a notice was received, if the confirmation of the date of receipt is unavailable, then the notice is presumed to have been received ten (10) business days after the date of mailing.

(l) This section does not preclude a trustee from proceeding under § 35-15-205 to have the trustee's accounts reviewed and settled by the court.

SECTION 9. Tennessee Code Annotated, Section 35-15-1005(e), is amended by adding the following language immediately preceding the period at the end of the subsection:

, or for any matter covered by a notice under § 35-15-817 if the provisions of § 35-15-817 were complied with and no objections were made within the time period prescribed in § 35-15-817

SECTION 10. Tennessee Code Annotated, Title 35, Chapter 15, Part 2, is amended by adding the following language as a new section:

35-15-206. Fiduciary attorney client privilege.

(a) A communication between an attorney and a client acting as a trustee, trust advisor, or trust protector is privileged and protected from disclosure to the same extent as if the client was acting in his, her, or its individual capacity and was not acting as a trustee, trust advisor, or trust protector.

(b) The privilege is not waived by:

(1) A fiduciary relationship between the trustee, trust advisor, or trust protector and a beneficiary of the trust; or

(2) The use of trust property to compensate the attorney for legal services rendered to the trustee, trust advisor, or trust protector.

(c) If an attorney's client is a trustee, trust advisor, or trust protector, then the attorney's client is the person then-acting as trustee, trust advisor, or trust protector, as applicable. A successor trustee, trust advisor, or trust protector does not succeed the attorney-client relationship of the person's predecessor.

(d) A trustee, trust advisor, or trust protector and the trustee's, trust advisor's, or trust protector's successor may agree to share privileged

communications relating to some or all matters involving the trust. The disclosure of privileged communications under the agreement does not waive the disclosing party's privilege. Unless the agreement provides otherwise, privileged communications disclosed under the agreement must not be disclosed to a third party without the disclosing party's consent or a court order.

(e) This section does not impair or abridge the law governing exceptions to the attorney-client privilege relative to claimants through the same deceased.

SECTION 11. Tennessee Code Annotated, Section 35-16-111(2), is amended by adding the following language at the end of the sentence:

provided, however, that a trust provision effecting a transfer by reason of the transferor's death to the transferor's estate, another trust, either established during the transferor's lifetime or at the transferor's death, or pursuant to the transferor's last will and testament or other testamentary instrument, is not a power to appoint to the transferor, the transferor's creditors, the transferor's estate, or the creditors of the transferor's estate;

SECTION 12. Tennessee Code Annotated, Section 35-15-816(c)(1), is amended by deleting the following language:

(1) A trustee who has authority, under the terms of a testamentary instrument or irrevocable inter vivos trust agreement, to invade the principal of a trust to make distributions to, or for the benefit of, one (1) or more proper objects of the exercise of the power, may instead exercise that authority by appointing all or part of the principal of the trust in favor of a trustee of a trust under an instrument other than that under which the power to invade is created or under the same instrument if the exercise of that authority:

and substituting the following:

(1) A trustee who has authority, under the terms of a testamentary instrument or irrevocable inter vivos trust agreement, to invade the principal of a trust to make

distributions to, or for the benefit of, one (1) or more proper objects of the exercise of the power, may instead exercise that authority by appointing all or part of the principal of the trust in favor of a trustee of a second trust if the exercise of that authority:

SECTION 13. Tennessee Code Annotated, Section 35-15-816(c)(12), is amended by deleting the subdivision and substituting the following:

(12) For purposes of this section:

(A) "Original trust" means the trust from which principal is being distributed; and

(B) "Second trust" means an original trust after modification or restatement under this section, or a trust to which a distribution of property from an original trust is or may be made under this section; provided, that the exercise of the power to appoint principal under this subsection (c) to a second trust by restatement or modification of the original trust does not require the retitling of property titled to the original trust or a change in any payable on death or beneficiary designations to the original trust, even if the second trust is created by a fiduciary or other person as the nominal settlor.

SECTION 14. Tennessee Code Annotated, Section 35-15-1301(a)(4), is amended by adding the language "organized in this state" immediately preceding the semicolon at the end of the subdivision.

SECTION 15. Tennessee Code Annotated, Section 35-15-1301(b)(11), is amended by deleting the subdivision and substituting instead the following:

(11)

(A)

(i) During the thirty-day period ending on the date the organizer files formation documents with the secretary of state, the organizer of the

prospective entity sends notice to the department of its intention to form a special purpose entity, which notice must include the following:

(a) The name, address, and telephone number of each organizer; and

(b) The name of the prospective corporate trustee; and

(ii) Within thirty (30) days after the date on which an entity is created, the entity pays a one-time initial fee of one thousand dollars (\$1,000) to the department and notifies the department of:

(a) The entity's existence;

(b) The entity's capacity to act; and

(c) The name of the corporate trustee for each separate trust for which the entity is engaged as a trust protector or trust advisor;

(B) A special purpose entity formed pursuant to this section shall comply with this section; provided, however, any entity that complied with subdivision (b)(11)(A)(ii) only on or before August 1, 2022, is in compliance with this section;

(C) Except for an entity that complied with subdivision (b)(11)(A)(ii) on or before August 1, 2022, the notice described in subdivision (b)(11)(A)(ii) must include a copy of the notice provided to the department under subdivision (b)(11)(A)(i); and

SECTION 16. Tennessee Code Annotated, Section 48-17-301, is amended by deleting the section and substituting instead the following:

48-17-301. Voting trusts.

(a) One (1) stockholder, or two (2) or more stockholders by agreement, may in writing deposit capital stock of an original issue with or transfer capital

stock to any person or entity authorized to act as trustee, for the purpose of vesting in the person or entity, who may be designated voting trustee, or voting trustees, the right to vote thereon for any period of time determined by such agreement, upon the terms and conditions stated in such agreement. The agreement may contain any other lawful provisions not inconsistent with such purpose. After delivery of a copy of the agreement to the registered office of the corporation in this state or the principal place of business of the corporation, which copy must be open to the inspection of any stockholder of the corporation or any beneficiary of the trust under the agreement daily during business hours, certificates of stock or uncertificated stock must be issued to the voting trustee or trustees to represent any stock of an original issue so deposited with such voting trustee or trustees, and any certificates of stock or uncertificated stock so transferred to the voting trustee or trustees must be surrendered and cancelled and new certificates or uncertificated stock must be issued to the voting trustee or trustees. A certificate so issued must state that it is issued pursuant to such agreement, and that fact must also be stated in the stock ledger of the corporation. The voting trustee or trustees may vote the stock so issued or transferred during the period specified in the agreement. Stock standing in the name of the voting trustee or trustees may be voted either in person or by proxy, and in voting the stock, the voting trustee or trustees shall not incur responsibility as stockholder, trustee, or otherwise, except for their own individual malfeasance. In any case where two (2) or more persons or entities are designated as voting trustees, and the right and method of voting any stock standing in their names at any meeting of the corporation are not fixed by the agreement appointing the trustees, the right to vote the stock and the manner of

voting it at the meeting shall be determined by a majority of the trustees, or if the trustees are equally divided as to the right and manner of voting the stock in any particular case, the vote of the stock in such case must be divided equally among the trustees.

(b) Any amendment to a voting trust agreement must be made by a written agreement, a copy of which must be delivered to the registered office of the corporation in this state or principal place of business of the corporation.

(c) This section does not invalidate any voting or other agreement among stockholders or any irrevocable proxy that is not otherwise illegal.

SECTION 17. The headings to sections in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 18. The Tennessee Code Commission is requested to publish in Tennessee Code Annotated the revisions required to conform to the current state of the law official comments for Chapters 5, 6, 15, and 16 of Title 35 that are filed with the executive secretary of the Tennessee Code Commission by June 10, 2022, unless a later date is provided by the executive secretary, by duly authorized representatives of the Trust Committee of the Tennessee Bankers Association.

SECTION 19. This act takes effect upon becoming a law, the public welfare requiring it.